

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECLAIM THE RECORDS and ALEC
FERRETTI,

Plaintiffs,

-v-

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendant.

21 Civ. 6397 (MKV) (RWL)

ANSWER

ANSWER TO COMPLAINT

Defendant United States Citizenship and Immigration Services (“USCIS” or “Defendant”), by its attorney, Audrey Strauss, United States Attorney for the Southern District of New York, respectfully submits the following answer to Plaintiffs’ Complaint brought pursuant to the Freedom of Information Act (“FOIA”).

Preliminary Statement¹

1. Paragraph 1 of the Complaint consists of Plaintiffs’ characterization of this action as being brought under FOIA, to which no response is required. Defendant respectfully refers the Court to Plaintiffs’ Complaint for a complete and accurate statement of its contents. The remainder of Paragraph 1 of the Complaint contains legal conclusions to which no response is required. To the extent a response is deemed required, Defendant denies.

¹ For ease of reference, Defendant refers to Plaintiffs’ headings and titles, but to the extent those headings and titles could be construed to contain factual allegations, those allegations are denied.

2. Paragraph 2 of the Complaint contains Plaintiffs' prayer for relief, to which no response is required. To the extent a response is deemed required, Defendant denies that Plaintiffs are entitled to the relief that they seek or to any relief.

Jurisdiction and Venue

3. Paragraph 3 of the Complaint contains legal conclusions relating to jurisdiction, to which no response is required.

4. Paragraph 4 of the Complaint contains legal conclusions relating to venue, to which no response is required.

5. Paragraph 5 of the Complaint contains legal conclusions related to exhaustion, to which no response is required. To the extent a response is deemed required, Defendant denies.

Parties

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint.

7. Defendant Admits.

Factual Background

8. Defendant denies it received seven FOIA requests on October 20, 2020, and avers that it received a request dated October 12, 2020, seeking records with respect to these individuals. Defendant respectfully refers the Court to Plaintiffs' request for a full and accurate statement of its contents and denies any allegations inconsistent therewith. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations relating to the dates of birth or death of the individuals, but avers that USCIS research has indicated that at least three of the individuals appear to be more than 100 years old.

9. Defendant admits it sent Plaintiffs closure letters dated October 30, 2020. The remainder of Paragraph 9 of the Complaint is a characterization of those letters. Defendant respectfully refers the Court to those letters for a full and accurate statement of their contents and denies any allegations inconsistent therewith.

10. Defendant admits Plaintiffs sent it a letter dated November 17, 2020. The remainder of Paragraph 10 of the Complaint is a characterization of that letter. Defendant respectfully refers the Court to that letter for a full and accurate statement of its contents and denies any allegations inconsistent therewith.

11. Defendant admits Plaintiffs sent it an email on December 19, 2020. The remainder of Paragraph 11 of the Complaint is a characterization of that email. Defendant respectfully refers the Court to that email for a full and accurate statement of its contents and denies any allegations inconsistent therewith.

12. Defendant admits it sent an email to Plaintiffs on December 21, 2020. The remainder of Paragraph 12 of the Complaint is a characterization of that email. Defendant respectfully refers the Court to that email for a full and accurate statement of its contents and denies any allegations inconsistent therewith.

13. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations regarding whether letters were lost in the mail, the date Plaintiffs received letters, or which letters or the number of letters received on or around January 1, 2021. Defendant admits that it sent Plaintiffs letters dated December 2, 2020. The remainder of Paragraph 13 of the Complaint is a characterization of those letters. Defendant respectfully refers the Court to those letters for a full and accurate statement of their contents and denies any allegations inconsistent therewith.

14. Defendant admits Plaintiffs submitted a letter of appeal on January 15, 2021, and denies the remaining allegations in Paragraph 14. Defendant respectfully refers the Court to the January 15, 2021, letter for a full and accurate statement of its contents and denies any allegations inconsistent therewith.

15. Defendant admits Associate Counsel with USCIS sent Plaintiffs a letter dated February 2, 2021. The remainder of Paragraph 15 of the Complaint is a characterization of that letter. Defendant respectfully refers the Court to that letter for a full and accurate statement of its contents and denies any allegations inconsistent therewith.

16. Paragraph 16 of the Complaint contains Plaintiffs' legal conclusions relating to FOIA, to which no response is required. To the extent a response is deemed required, Defendant denies.

Cause of Action

17. Paragraph 17 of the Complaint contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant denies.

18. Paragraph 18 of the Complaint contains Plaintiffs' legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant denies.

Request for Relief

The remainder of the Complaint contains Plaintiffs' prayer for relief, to which no response is required. To the extent a response is deemed required, denies that Plaintiffs are entitled to the relief that they seek or to any relief.

DEFENSES

For further defenses, Defendant alleges as follows:

FIRST DEFENSE

Plaintiffs' complaint should be dismissed in whole or in part for failure to state a claim on which relief may be granted.

SECOND DEFENSE

Some or all of the requested documents or information are exempt from disclosure, in whole or in part, under 5 U.S.C. § 552(b).

THIRD DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs' requests for relief that exceed the relief authorized under FOIA, 5 U.S.C. § 552.

FOURTH DEFENSE

Plaintiffs are not entitled to declaratory relief. *See* 5 U.S.C. § 552(a)(4)(B).

FIFTH DEFENSE

Plaintiffs are not entitled to attorney fees under 5 U.S.C. § 552(a)(4)(E).

SIXTH DEFENSE

To the extent that Defendant has exercised due diligence in processing Plaintiffs' FOIA request and exceptional circumstances exist, Defendant should be allowed additional time to process the request. 5 U.S.C. § 552(a)(6)(C).

SEVENTH DEFENSE

Plaintiffs' FOIA request fails, in whole or in part, to reasonably describe the requested records under 5 U.S.C. § 552(a)(3)(A).

EIGHTH DEFENSE

Plaintiffs have failed, in whole or in part, to exhaust their administrative remedies.

Defendant may have additional defenses which are not known at this time but which may become known through further proceedings. Accordingly, Defendant reserves the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure.

WHEREFORE Defendant respectfully requests that the Court: (1) dismiss the complaint with prejudice; (2) enter judgment in favor of Defendant; and (3) grant such further relief as the Court deems just and proper.

Dated: September 7, 2021
New York, New York

Respectfully submitted,

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Southern District of New York

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